

REMARKS

In the non-final Office Action of May 29, 2008, the Examiner rejected claims 1, 2, 9, 12-14, and 33-36. In response, Applicants have amended the claims to more clearly distinguish embodiments of the present invention. Based on the above amendments and following remarks, Applicants request reconsideration of the Application.

Rejection Under 35 U.S.C. §112

On page 2 of the non-final Office Action, the Examiner rejected claims 1, 2, 5, 9, 12, 14, and 33-38, as “being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.” Specifically, the Examiner argues that “[a] configured compound means physical placement or manipulation of the compound...” Accordingly, Applicants have amended claims 1, 9, 36, and 37, “to avoid [the] ambiguity, confusion and indefiniteness” purportedly caused by Applicants’ configured compound limitation as asserted by the Examiner. Applicants respectfully submit they have overcome this deficiency with respect to claims 2 & 5, and have included the limitations of these currently cancelled claims within amended claim 1. Applicants also respectfully submit that the rejection of claims 12, 14, 33-35, and 38, should be withdrawn since these claims depend from independent claims that Applicants submit overcome the Examiner’s rejection under 35 U.S.C. §112.

Rejection Under 35 U.S.C. §102 or §103

On page 2, the Examiner rejected claims 1, 2, 12-14, and 33-36 as being anticipated by or, in the alternative, obvious over U.S. Patent No. 4,879,117 to Rombi (hereinafter “*Rombi*”). On page 3, the Examiner rejected claims 1, 9, and 36 as being

anticipated by or, in the alternative, obvious over U.S. Patent No. 4,102,991 to Kydonieus (hereinafter "*Kydonieus*").

The Examiner, however, failed to articulate any rejection of claim 5, claim 37, and claim 38. Accordingly, Applicants have amended claim 1 to include the limitations of claim 5 (and intervening claim 2), and respectfully request that amended claim 1, and its dependent claim 35 be allowed to issue. Applicants also respectfully request that independent claim 37 and its dependent claim 38 be allowed to issue.

On page 3, the Examiner continues to assert that *Rombi* has "a resin/repellant/sustained release compound mixed; ... Example 7 for instance." Applicants respectfully request the Examiner specify where in Example 7 (or where in *Rombi*) these elements are taught, suggested, or rendered obvious (aside from the "insecticide"). Applicants can find no teaching of a resin, repellant, and sustained release compound mixed together as claimed. Respectfully, until the Examiner is able to specify these teachings, the rejection should be withdrawn.

In its entirety, Example 7 of *Rombi* states:

EXAMPLE 7

A parallelepipedal strip of bonded cellulose already coated on three of its surfaces (see Example 1) with a layer of PVC (1.5 cm wide, 2.5 mm thick) is impregnated by a drop by drop system with the following insecticidal solution:
diazinon (insecticide) 1 to 5%
dioctyl phthalate q.s. ad 100%.

This strip is then stuck, by its non-coated surface, to a sheet of PVC-coated woven material of the same width and 0.8 mm thick. The whole is then cut into 70 cm sections (intended for use as collars for big dogs).

Further, as a matter of law, under 35 U.S.C. § 132 (a), whenever a claim for a patent application is rejected, the Examiner is required to provide the applicant with the reasons for such a rejection, with "such information and references as may be

useful in judging of the proprietary of continuing the prosecution of the application.” A rejection violates 35 U.S.C. § 132 when it “is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection.” *Chester v. Miller*, 906 F.2d 1574, 1578 (Fed. Cir. 1990). Here, the Examiner’s summary conclusion makes the rejection “so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection.”

On page 3 the Examiner states, “[t]he ‘wires’ are not identified as different from cotton wires or fibers of *Rombi*.” Because the Examiner failed to provide any context for this assertion, Applicants can only speculate it might be with respect to claim 37.

Amended claim 37 recites in part (emphasis added), “a geometric feature formed of the insect repelling composition, wherein the geometric feature is a spiral shape for **bundling a plurality of objects**.” Although Applicants’ previous response cited the example as shown in Applicants’ FIG. 12 of a spiral shaped insect repelling composition (10) that bundles a plurality of wires (102), the Examiner missed the fact that *Rombi* teaches a collar to be applied about a neck of an [i.e., one] animal. The collar is not a spiral shape nor is the collar configured to bundle a plurality of objects (i.e., animals). Furthermore, the application of the collar in *Rombi* requires multiple components for fastening the collar about the animal. Therefore, claim 37 is not anticipated or obvious in view of *Rombi*.

On page 3, the Examiner rejected claim 36 as being anticipated by or, in the alternative, obvious over *Kydonieus*. Applicants respectfully traverse the Examiner’s rejection of independent claim 36. In its entirety, the Examiner articulates the rejection as:

Flexible resin sustained release dispensers (column 4, lines 29-51) permitting forming a spiral)loop, confetti) shaped as desired to protect objects are disclosed. Example 1- dioctylphthalate as sustained release compound ; absent any specification thereof in the instant claims with repellent, chlorpyrifos or pyrethroids (column 3, lines 60-61) , absent any specification in the instant claims of any specific repellent..

The application as tapes or strips (column 13; 14) permits of forming over any shaped object as desired.

As noted by the Court of Custom and Patent Appeal in *In re Hoch*, "[i]t is important for an examiner to properly communicate the basis for a rejection so that the issues can be identified early and the applicant can be given fair opportunity to reply." 428 F.2d 1351, 1342 n.3 (CCPA (1970).

Notwithstanding *In re Hoch*, the Examiner somehow asserts that *Kydonieus* teaches, suggests, and/or renders obvious Applicants' amended claim 36, which recites (among other things), a **sustained-release compound mixed with the resin** and a **geometric feature formed of the insect repelling composition for installation about an object to be protected**.

In support of the rejection, the Examiner cites *Kydonieus* column 4, lines 29-51 for purportedly showing **flexible resin sustained release dispensers**, which states:

The preferred multi-layer, polymeric dispensers are tough, flexible laminates of integrally bonded layers and are highly resistant to mechanical destruction which could result in accidental and rapid loss of the active agent to the environment. The multi-layer polymeric controlled release dispensers, as well as the homogeneous extruded polymeric dispensers, may be used in any configuration or as part of any structural assembly suited to maximize efficacy against crawling insects, such as cockroaches. Forms such as adhesive backed sheets or strips and confetti are useful. The material may also be incorporated into loops, shelters, traps or the like. A particularly preferred embodiment of the invention comprises a strip of the laminated material provided with a pressure-sensitive adhesive coating on all or part of one surface to facilitate locating the dispenser in a manner to allow maximum effect against crawling

insects, such as cockroaches.

The preferred multi-layer polymeric dispensers for use in the process of this invention have the unique ability to protect active ingredients from degradation, thus prolonging the effective life of the insecticide without increase its persistence in the environment.

Among other things, the words “resin” or “sustained” do not appear in the above citation. Further, a sustained release dispenser does not teach or suggest Applicants’ sustained-release compound mixed with the resin.

Additionally, the Examiner cites *Kydonieus* Example 1 for purportedly showing dioctylphthalate as a sustained release compound, which states:

EXAMPLE 1

A sheet of polyvinylchloride film having a thickness of 0.004 inch was coated with a plastisol coating prepared by dispersing 100 parts of polyvinylchloride resin in about 25 parts of dioctylphthalate and then dispersing 120 parts of chlorpyrifos into the 125 parts of plastisol. The plastisol thus prepared was mixed until uniform and the coating was applied to the base sheet of polyvinylchloride in a thickness of about 0.02 inches. The coated polyvinylchloride film was then overlaid with a second sheet of polyvinylchloride also having a thickness of 0.004 inches. The assembled layers were then laminated under suitable conditions of heat and pressure until an integral firmly bonded product was obtained. The laminated structure thus produced contained approximately 30.8% chlorpyrifos insecticide based on the total weight of the laminate.

Similarly within this citation, the words “sustained” or “release” do not appear in the above citation, let alone any suggestion of dioctylphthalate having such properties.

Further, in support of the rejection, the Examiner cites *Kydonieus* column 3, lines 60-61 for purportedly showing chlorpyrifos or pyrethroids, which states:

Non-volatile toxicants suitable for use in the foregoing dispensers include, but are not limited to, chlorpyrifos, diazinon, chlordane, carbaryl, malathion, resmethrin, bioresmethrin, propoxur, fenchlorphos, 2-(1,2-dioxolan-2-yl)phenyl-n-methylcarbamate, 2-21-dimethyl-1,3-benzodioxol-

4-ol methylcarbamate and Velcicol's organo phosphate compound Vel-4283.

Among other things, **neither the Examiner nor this citation provides any suggestion of the relevance of this citation to any of Applicants' claims.**

Finally, the Examiner cites *Kydonieus* column 13, 14 for purportedly showing **tapes or strips that permit forming over any shaped object as desired**, which states:

For tests with the preferred dispensers, the tape was applied only at the floor-wall intersections (19.5 inches of tape per 0.5 ft.^{sup.2}). No tape was used in the vertical intersections or on the cover.

Among other things, this citation fails to teach, suggest, or render obvious Applicants' recited limitation of a **geometric feature formed of the insect repelling composition for installation about an object to be protected.**

Consequently, the rejection of claim 36 based on *Kydonieus* should be withdrawn.

CONCLUSION

Based on the foregoing remarks, Applicants believe the rejections to the claims have been overcome, and that the present Application is in condition for allowance. If the Examiner has any questions regarding the case, the Examiner is invited to contact Applicants' undersigned representative.

Respectfully submitted,

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